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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,260	12/22/2003	Eric C. Steindorf	KCX-771 (19263)	4463
22827	7590	12/29/2004	EXAMINER	
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			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,260

Applicant(s)

STEINDORF, ERIC C.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 22nd, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 14, 17-19, 21-24, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 12, 13, 15, 16, 20 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed on September 30th, 2004, with respect to claims 1 through 5, 10, 12, 13, 15, 16, 20 and 25 have been fully considered and are persuasive. The previous office action has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 5, 10, 12, 13, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard et al. US Patent No. 4,969,457 in view of Jackson US Patent No. 3,490,447. Referring to claim 1, Hubbard discloses the applicant's invention as claimed with the exception of providing a body portion having a baffle layer having an outer and inner surface with a plurality of projections extending from at least one of the outer and inner surfaces, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through. Jackson discloses a surgical mask that does provide a body portion having a baffle layer having an outer and inner surface with a plurality of projections extending from at least one of the outer and inner surfaces, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through. Therefore it would have been obvious to modify Hubbard's invention by providing a body portion having a baffle layer having an outer and inner surface with a plurality of

projections extending from at least one of the outer and inner surfaces, the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through in order make it easier for the air to enter and to prevent fluids from entering.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The intended use statements are not given any patentable weight in this instance for example “to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through”.

Referring to claim 2, Hubbard discloses the applicant’s invention as claimed with the exception of providing a baffle layer that define a plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels. Jackson discloses a surgical mask that does provide a baffle layer that define a plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels. Therefore it would have been obvious to modify Hubbard’s invention by providing a baffle layer that define a plurality of interconnected channels for redirecting the flow of fluid that strikes the body portion, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels in order to prevent fluids from entering.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The intended use statements are not given any patentable weight in this instance for example “for redirecting the flow of fluid that strikes the body portion”.

Referring to claim 3, Hubbard discloses the applicant’s invention as claimed with the exception of providing a body portion that has a first layer contacting the projections of the baffle layer and the body portion that has a third layer contacting the inner surface of the baffle layer. Jackson discloses a surgical mask that does provide a body portion that has a first layer contacting the projections of the baffle layer and the body portion that has a third layer contacting the inner surface of the baffle layer. Therefore it would have been obvious to modify Hubbard’s invention by providing a body portion that has a first layer contacting the projections of the baffle layer and the body portion that has a third layer contacting the inner surface of the baffle layer in order to prevent fluids from entering.

Referring to claim 5, Hubbard discloses the applicant’s invention as claimed with the exception of providing projections that are circular pillows. Jackson discloses a surgical mask that does provide projections that are circular pillows. Therefore it would have been obvious to modify Hubbard’s invention by providing projections that are circular pillows in order to prevent fluids from entering.

Referring to claim 10, Hubbard discloses the applicant’s invention as claimed with the exception of providing plurality of projections that extend from the outer surface of the baffle layer. Jackson discloses a surgical mask that does provide plurality of projections that extend

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from the outer surface of the baffle layer. Therefore it would have been obvious to modify Hubbard's invention by providing plurality of projections that extend from the outer surface of the baffle layer in order to prevent fluids from entering.

Referring to claims 12 and 13, Hubbard discloses the applicant's invention as claimed with the exception of providing a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion. Jackson discloses a surgical mask that does provide a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion. Therefore it would have been obvious to modify Hubbard's invention by providing a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion in order to prevent fluids from entering.

Referring to claim 20, Hubbard discloses the applicant's invention as claimed with the exception of providing projections that are circular pillows. Jackson discloses a surgical mask that does provide projections that are circular pillows. Therefore it would be obvious to modify Hubbard's invention by providing projections that are circular pillows in order to prevent fluids from entering.

Referring to claim 25, Hubbard discloses the applicant's invention as claimed with the exception of providing plurality of projections that extend from the outer surfaces of the layer having the projections. Jackson discloses a surgical mask that does provide plurality of projections that extend from the outer surfaces of the layer having the projections. Therefore it would have been obvious to modify Hubbard's invention by providing plurality of projections

that extend from the outer surfaces of the layer having the projections in order to prevent fluids from entering.

Claims 4, 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard et al. US Patent No. 4,969,457 in view Springett et al. US Patent No. 6,102,039. Referring to claims 4 and 15, Hubbard discloses the applicant's invention as claimed with the exception of providing a first layer that is stiffer than the baffle layer. Springett discloses a molded respirator containing sorbent particles that does provide a first layer that is stiffer than the baffle layer. Therefore it would have been obvious to modify Hubbard's invention by providing a first layer that is stiffer than the baffle layer in order to assist in guiding the particles/fluids from the user's mouth and nose.

Referring to claim 16, Hubbard discloses the applicant's invention as claimed with the exception of providing a body portion that has a an additional layer that us the layer farthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections. Springett discloses a molded respirator containing sorbent particles that does provide a body portion that has a an additional layer that us the layer farthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections. Therefore it would have been obvious to modify Hubbard's invention by providing a body portion that has a an additional layer that us the layer farthest from the user when worn and adjacent to the layer having the projections, the additional layer stiffer than the layer having the projections in order to assist in guiding the particles/flids away from the users mouth and nose.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP
December 27th, 2004

Henry Bennett
Supervisory Patent Examiner
Group 3700

